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In the Supreme Court of the United States

OCTOBER TERM, 1975

NO. 75-1422

DIAMOND M DRILLING COMPANY,
Petitioner

versus

JOSEPH S. GUEHO,
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

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IN THE SUPREME COURT OF THE UNITED STATES

October Term 1975

NO.

DIAMOND M DRILLING COMPANY,
Petitioner

versus

JOSEPH S. GUEHO,
Respondent

Petition for a Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

The Petitioner prays that a writ of certiorari issue to review the judgments of the United States Court of Appeals for the Fifth Circuit entered in the above case on December 17, 1975.

OPINIONS BELOW

The opinion of the District Court for the Western District of Louisiana is not reported.

The opinion of the Court of Appeals for the Fifth Circuit is reported at F. 2d 924.

JURISDICTION

The judgment of the Court of Appeals for the Fifth Circuit was made and entered on December 17, 1975, and copies thereof are appended to this opinion. The petition of Diamond M Drilling Company for a rehearing was denied on

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February 2, 1976. The mandate was recalled and stayed by the Court of Appeals for the Fifth Circuit Court of Appeals to and including April 5, 1976 by an Order dated March 8, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Can a District Court approve a Jones Act settlement between a plaintiff and the defendant-employer and, subsequently, set aside the settlement in the absence of a factual basis, rendering it invalid?

STATEMENT

On March 11, 1972, the plaintiff, a Jones Act employee of Diamond M Drilling Company, sustained an injury to his right knee, when the crewboat, M/V ELTON D, which he was riding on, ran aground in the fog in a canal in St. Mary Parish, Louisiana. The crewboat was transporting the plaintiff and other members of a drilling crew to Rig 40, a drilling barge owned by the defendant.

The defendant, through an independent investigator, Christopher B. Siegrist, negotiated a settlement with the plaintiff for injuries sustained to his right knee for the sum of $18,000.00.

On February 8, 1974, the plaintiff, not represented by counsel, met with Mr. Gary Blaize, an associate from the law firm representing Diamond M Drilling Company, and together they met with Judge Edwin F. Hunter, Jr., United States District Judge in Lake Charles, Louisiana.

Judge Hunter ordered his Court Reporter to appear and

the plaintiff was interviewed by Judge Hunter to determine if the settlement entered into between the parties was fair to the plaintiff. Judge Hunter approved the settlement and executed Findings of Fact and Conclusions of Law and signed a Judgment in favor of the plaintiff. The plaintiff was then paid $18,000.00 and he executed a Release in favor of defendant and a Satisfaction of Judgment.

On the evening of February 8, 1974, the plaintiff's employment with defendant was terminated. Neither the investigator nor the attorneys representing the defendant knew that the plaintiff would be terminated by the defendant.

The plaintiff was terminated because this was the fifth accident he had had in five years and he had received over $35,000.00 in monies to settle the previous claims.

The plaintiff retained counsel and Judge Hunter set aside the settlement and placed the matter on the trial calendar.

Defendant filed a motion to have Judge Hunter recuse himself, because it was anticipated that Judge Hunter would be called as a witness by defendant in support of its argument that the settlement approved by Judge Hunter on February 8, 1974 was valid. Judge Hunter did recuse himself and the case was transferred to Judge Putnam in Lafayette, Louisiana.

Judge Putnam set the trial of the case for February 25, 1975. Counsel for defendant requested a plenary hearing prior to trial to determine if the settlement approved by Judge Hunter was valid. The plenary hearing was held on the morning of February 25, 1975 and Judge Putnam found in

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favor of the plaintiff.

The trial of the case (non-jury) was conducted that afternoon and Judgment was rendered in favor of plaintiff in the sum of $25,000.00.

Defendant appeals only from Judge Putnam's ruling in favor of the plaintiff at the plenary hearing and the Court of Appeals for the Fifth Circuit's affirmance of that ruling. Defendant contends that there wasn't any factual basis and/or dispute to support Judge Putnam's ruling setting aside the settlement of February 8, 1974 before Judge Hunter.

REASONS FOR GRANTING THE WRIT

I. *District Court*

At the plenary hearing, Joseph Gueho, the plaintiff, testified:

A He didn't tell me like that. He just told me it wouldn' t have any bearing on my job.

Q Isn't it true, Mr. Gueho, that there was no guarantee of a job to you for any specific length of time.

A Yes, there wasn't no guarantee, but . . . .

Q There was no guarantee. Isn't that true?

A That's right. But the way he put it to me, I thought I had a job.

Q But the fact of the matter is, Mr. Gueho, that you were not guaranteed a job. You admitted that in your deposition a couple of weeks ago, isn't that true?

A He didn't guarantee anything, no.

Q He did not guarantee it.

A No.

Q He did not tell you, "Well, Mr. Gueho, you are going to have a job for five years –

A No.

Q –ten years or one year." He didn't tell you that, did he?

A No, sir.

Q And you knew perfectly well that if for some reason you could not do your job, or if they wanted to fire you six months after you took this money, or a year, that they had the power to do that, did you not, sir?

A Well, yes, I knew that.

(Transcript pages 35-36)

Q You knew, as a fact, that Diamond M Drilling Company could terminate you at any time following the settlement, or at any time they wanted to, Isn't that true?

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A Yes, I knew that.

(Transcript page 40)

Judge Putnam ruled as follows:

On the question of the release, gentlemen, the Court has considered the evidence in the case. It is clear that Mr. Gueho was under the impression that he would not lose his job because of the settlement. There is no evidence to show that he did lose his job because of the settlement. However, because of his long association with this company, the fact that he had worked for them after having had a previous knee injury in 1968, and another injury to his chest and kidney in 1971, and had been assured by two of his superiors – at least one of whom was present in the Court today and did not testify–that as long as they were with the company he would have his job, I think he was under the impression that he would not be discharged because of the settlement, or when the settlement was effected.

I am quite certain that neither Mr. Blaize nor Mr. Siegrist represented to Mr. Gueho that he would retain his job, and I am also of the opinion, and I so find, that they, in fact, told him that the settlement was not connected with his job in any way, and that his reliance that he would not be discharged was predicated upon his prior experience with the company and the prior assurance that was given to him by his superiors, that I have mentioned before.

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Furthermore, the fact that the Judge who approved the release granted a new trial, in my judgment, had the effect of setting aside the release already executed by action of the Court, and the Motion is denied on that basis. The Court reserves the right to make more detailed Findings and Conclusions at the end of the case.

I want to say, however, that up to this point the record reflects that Mr. Gueho has suffered with his knees for some time. He made one settlement in 1971 for an injury received to his knees in 1968 that was approved by Judge Hunter in the Lake Charles Division, and in 1971 he received the sum of $10,000 for these injuries to his knees. The chondromalacia was present at that time, and I would assume–without deciding or finding that the chondromalacia was present even prior to 1968, because of the very nature of the disease, or the condition.

Now, the Court is ready to proceed, gentlemen, with the remainder of the case.

(Transcript pages 63-65)

It is clear from the transcript quoted above that the plaintiff, Joseph Gueho, knew full well when he appeared before Judge Hunter on February 8, 1974 to settle his claim that the defendant did not guarantee his job as part of the settlement. The plaintiff clearly admits that he knew he could be discharged at any time after the settlement for any reason.

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Judge Putnam's finding that, because of prior settlements, where plaintiff was told he could keep his job, led plaintiff to believe he would keep his job after the settlement of February 8, 1974 is clearly not supported by the record.

There is no factual basis in the evidence to support the setting aside of the settlement of February 8, 1974 before Judge Hunter.

Federal Courts have held under a great variety of circumstances that a settlement once entered into cannot be repudiated by either party and will be summarily enforced. *Cia Anon Venezolana De Navegacion v. Harris*, 374 F.2d 33, 35 (CA 5-1967). See also *Hennessy v. Bacon*, 137 US 78 (1890); *Kelly v. Greer*, 365 F.2d 669 (CA 3-1966); *Allstate Investors Inc. v. Bankers Bond Co.*, 343 F.2d 618 (CA 6-1965); *Cummins Diesel Michigan, Inc. v. The Falcon*, 305 F. 2d 721 (CA 7-1962); *Florida Trailer and Equip Co. v. Deal*, 284 F.2d 567 (CA 5-1960); *Ingalls Iron Works Co. v. Ingalls*, 280 F.2d 423 (CA 5-1960); *The Santa Madre v. Dagounakis*, 277 F.2d 461 (CA 4-1960).

" 'Compromises of disputed claims are favored by the courts (citing case)'. Where the parties, acting in good faith, settle a controversy, the courts will enforce the compromise without regard to what the result might, or would have been, had the parties chosen to litigate rather than settle." *J. Kahn and Co. v. Clark*, 178 F.2d 111, 114 (CA 5-1949); see also: *Williams v. First National Bank*, 216 US 582 (1910); *Hennessy v. Bacon*, supra; *Crisp County v. S. J. Groves & Son Co.*, 73 F.2d 327 (CA 5-1934).

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The facts clearly show that each of the parties, acting in good faith, and acting within their authority, entered into a valid settlement agreement approved by Judge Hunter on November 8, 1974. The controlling authority in this circuit is *Cia Anon Venezolana De Navegacion v. Harris*, 374 F.2d 33 (CA 5-1967), and *Strange v. Gulf & South American Steamship Company, Inc.*, 495 F.2d 1235 (5th Cir., 1974), and defendant, respectfully submits that it is entitled to an Order summarily enforcing the settlement of February 8, 1974 entered into by the parties and approved by Judge Hunter.

II. *Fifth Circuit Court of Appeals*

The Fifth Circuit in its opinion of December 17, 1975 states:

> "(1-3) The only issue before this Court is whether there was a factual basis for the decision of the trial court in setting aside the settlement. Settlements involving seamen's rights are subject to careful scrutiny. See, *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 248, 63 S.Ct. 246, 87 L.Ed. 239 (1942). In an action under the Jones Act, the burden is upon the party claiming settlement as a defense to show that it was entered into by the seaman with an informed understanding of his rights and a full appreciation of the settlement's consequences. See, *Blanco v. Moran Shipping Company*, 483 F.2d 68 (5th Cir., 1973); *Cates v. United States*, 451 F.2d 411 (5th Cir., 1971). In this case, there was ample evidence to demonstrate that the plaintiff was led to believe that he would maintain his employment. Gueho questioned the insurance adjuster whether the

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> settlement would affect his job and received the reply that there would be no effect. Moreover, when the plaintiff had entered into a prior settlement concerning a previous injury he obtained the specific promise from Diamond that he would maintain his employment. This previous promise, coupled with the responses given by the adjuster to plaintiff's questioning concerning his employment, clearly demonstrates that the plaintiff was led to believe that the settlement included a promise of continued employment. In short, the defendant did not bear its burden of demonstrating that the seaman fully appreciated the consequences of the settlement."

The Fifth Circuit quotes a Supreme Court decision, *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 63 S.Ct. 246, 87 L.Ed. 239 (1942), and two Fifth Circuit opinions, *Blanco v. Moran Shipping Company*, 483 F.2d 63 (5th Cir. 1973) and *Cates v. United States*, 451 F.2d 411 (5th Cir. 1971) which in essence stand for the following general statement of the law, to-wit:

> ". . .the burden is upon one who sets up a seaman's release to show that it was executed freely, without deception or coercion, and that it was made by the seaman with a full understanding of his rights. The adequacy of the consideration and the nature of the medical and legal advice available to the seaman at the time of signing the release are relevant to an appraisal of this understanding."

In the *Blanco* case, supra, the plaintiff could *not* speak English and was advised to settle his case by his attorneys, who were without knowledge of the fact that the plaintiff

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had undergone surgery and was advised to undergo surgery in the future. The Court at page 64 stated:

> "Obviously if counsel were not aware of the subsequent surgical procedures and their costs and sequelae or any prognosis for further surgery, they were in no position to advise their client as to the adequacy of the proposed settlement."

The *Cates* case, supra, deals with a situation wherein a plaintiff settled with one defendant, Reynolds, on the date set for trial, at which time the other defendant, the Government, moved for a continuance.

Subsequently, a "Red Letter Release" was executed by the plaintiff in favor of Reynolds and the Government argued that failure to reserve rights against it expressly in the release operated to dismiss the Government from liability. The Fifth Circuit held the Government's Argument had no foundation in law on fact.

Relying on these two prior cases, the Fifth Circuit then stated:

1. "Gueho questioned the insurance adjuster whether the settlement would affect his job and received the reply that there would be no effect."

2. "Moreover, when the plaintiff had entered into a prior settlement concerning a previous injury he obtained the specific promise from Diamond that he would maintain his employment. This previous promise, coupled with

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> the responses given by the adjuster to plaintiff's questioning concerning his employment, clearly demonstrates that the plaintiff was led to believe that the settlement included a promise of continued employment."

In the first sentence, the Fifth Circuit states that there was "ample evidence to demonstrate that the plaintiff was led to believe he would maintain his employment." Apparently the ample evidence is contained in the next two sentences.

The first sentence which supports the Fifth Circuit's conclusions of "ample evidence" states:

> "Gueho questioned the insurance adjuster whether the settlement would affect his job and received the reply that there would be no effect."

This statement by the Fifth Circuit is *simply not* true. We quote from the testimony:

> Q Isn't it a fact that you did indicate indirectly to him that he may or may not be able to continue on working on his job.
>
> A Did I indicate to him that he may or may not be able to continuing working ?
>
> Q Correct.
>
> A No, sir.
>
> Q You didn't tell him he was going to be fired, or

not be fired, or continue to work for the company after he settled, did you?

A I told him that Diamond M Drilling Company did the hiring and the firing. If he had any question about his job to speak with them. I had authority to offer him $18,000, and as I recall with Mr. Gueho, the conversation was, "I'm just trying to get an agreement that you can live with and that they can live with."

Q Isn't it a fact that you made some comment to the effect that as far as you know, he would still be able to work for the company?

A No, sir.

Q It is your testimony you never made such a statement, that as far as you knew he could continue to work for the company -- that would be up to the company.

A I said if he had any questions about his job, that he would have to talk with Diamond M Drilling Company.

Q You didn't indicate in any way, though, that he would not be able to work for the company after he made a statement.

A Would you state that again, please?

Q Did you indicate in any way to him that after he made a settlement, he would not have a

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job with the company.

A No, sir.

(Transcript pages 16-17)

Q But the fact of the matter is, Mr. Gueho, that you were not guaranteed a job. You admitted that in your deposition a couple of weeks ago, isn't that true?

A He didn't guarantee anything, no.

Q He did not guarantee it.

A No.

Q He did not tell you, "Well, Mr. Gueho, you are going to have a job for five years –

A No.

Q --ten years or one year." He didn't tell you that, did he?

A No, sir.

Q And you knew perfectly well that if for some reason you could not do your job, or if they wanted to fire you six months after you took this money, or a year, that they had the power to do that, did you not, sir?

A Well, yes, I knew that.

(Transcript pages 35-36)

Q You knew, as a fact, that DiamondM Drilling Company could terminate you at any time following the settlement, or at any time they wanted to. Isn't that true?

A Yes, I knew that.

(Transcript page 40)

Additionally, this plaintiff appeared before United States District Judge Edwin F. Hunter who thoroughly reviewed the entire matter with the plaintiff to ensure that the plaintiff's rights were protected.

The second sentence which supports the Fifth Circuit's conclusion of "ample evidence" states:

> "Moreover, when the plaintiff had entered into a prior settlement concerning a previous injury he obtained the specific promise from Diamond that he would maintain his employment. This previous promise, coupled with the responses given by the adjuster to plaintiff's questioning concerning his employment, clearly demonstrates that the plaintiff was led to believe that the settlement included a promise of continued employment."

We again refer to the plaintiff's own testimony wherein he indicates that he knew that there was "no guarantee" of a job, if he accepted the $18,000 offer.

The Fifth Circuit then concludes that because of what the adjuster said (which is not supported by the record) and

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the fact that the plaintiff had a previous settlement and kept his job, that this "clearly demonstrates that the plaintiff was led to believe that the settlement included a promise of continued employment."

The Fifth Circuit has completely ignored the fact that this plaintiff appeared before U. S. District Judge Edwin Hunter on February 8, 1974, who *fully* advised him of all his rights. Secondly, in his testimony, he admits over and over again that he realized there wasn't any guarantee of a job if he accepted the settlement of $18,000.

The "ample evidence" on which the Fifth Circuit relies does not support its position, nor do the cases cited, since each is clearly distinguishable from the facts of this case.

In *Blanco*, supra, the plaintiff didn't speak English and his attorneys were not aware of prior surgery; and in *Cates*, supra, a plaintiff settles with one defendant and the other defendant attempts to escape liability by claiming that the release executed by plaintiff released all defendants.

We repeat, the plaintiff testified that he knew there was no guarantee of a job if he accepted $18,000 for his case. He was advised of all rights by a U. S. District Judge, who *approved* the settlement. The record supports these statements.

The plaintiff claims that when he had entered into a prior settlement concerning a previous injury he obtained the specific promise from Diamond M that he would keep his job, *yet*, he testified that he fully realized that when he settled this claim for $18,000 that he was not guaranteed a job. This Court takes the first fact and concludes from that,

that the plaintiff was "led to believe" he would maintain his employment when he settled this claim, *although* he testified *over* and *over* again, as outlined above, that he fully realized that when he settled this claim there was *no* guarantee of a job.

How could the Fifth Circuit reach a conclusion of fact which is not supported by the evidence. The prior settlement and guarantee of a job was merely a smoke screen used by plaintiff counsel in the trial of the case, but the plaintiff when confronted with the facts surrounding this settlement, admitted that there was no guarantee of employment.

CONCLUSION

For the reasons set forth above, it is respectfully submitted that this petition for a writ of certiorari should be granted.

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Attorney for Diamond M. Drilling Company, Petitioner

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CERTIFICATE OF SERVICE

I hereby certify that I have served copies of the foregoing Petition for a Writ of Certiorari on opposing counsel, this 1st day of April, 1976.

JOSEPH J. WEIGAND, JR.

APPENDIX A

ORDER TO STAY MANDATE

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 75-2742

FILED: Mar 8, '76
Edward W. Wadsworth
Clerk

JOSEPH S. GUEHO,
Plaintiff-Appellee

versus

DIAMOND M. DRILLING COMPANY, ET AL.,
Defendants-Appellants

Appeal from the United States District Court for the Western District of Louisiana

ORDER:

ON CONSIDERATION OF THE MOTION of appellants for recall and stay of judgment issued as mandate in the above numbered and entitled cause, pending an application for a writ of certiorari to the Supreme Court of the United States,

IT IS ORDERED that the judgment issued as mandate, be recalled and stayed to and including April 5, 1976, the stay to continue in force until the final disposition of the

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case by the Supreme Court, provided that within said period there shall be filed with the Clerk of this Court the certificate of the Clerk of the Supreme Court that certiorari petition has been filed.

IT IS FURTHER ORDERED that the Clerk shall issue the judgment as mandate upon the filing of a copy of an order of the Supreme Court denying the writ, or upon the expiration of the above period unless the above mentioned certificate shall be filed with the Clerk of this Court within that time.

s/ LOUIS R. MORGAN
UNITED STATES CIRCUIT
JUDGE

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APPENDIX B

OPINION OF CIRCUIT COURT OF APPEALS

Joseph S. GUEHO, Plaintiff-Appellee
v.
DIAMOND M. DRILLING COMPANY et al.,
Defendants - Appellants

No. 75 - 2742
Summary Calendar.*

United States Court of Appeals, Fifth Circuit

Dec. 17, 1975

Jones Act employee who had entered into settlement for injuries sustained when crew boat in which he was riding ran aground filed action to have settlement set aside. The United States District Court for the Western District of Louisiana at Lafayette, Richard J. Putnam, Jr., vacated the settlement and after trial rendered judgment in favor of employee and employer appealed. The Court of Appeals held that in view of evidence demonstrating that employee was led to believe that settlement included the promise of continued employment, employer did not discharge burden of demonstrating that employee, who was discharged on the evening of the day of the settlement, fully appreciated the consequences of the settlement.

Affirmed.

---

* Rule 18, 5 Cir.; see *Isbell Enterprises, Inc. v. Citizens Casualty Co. of New York et al.*, 5 Cir., 1970, 431 F.2d 409, Part I.

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1. Compromise and Settlement - 4

Settlements involving seamen's rights are subject to careful scrutiny. Jones Act, 46 U.S.C.A. § 688 et seq.

2. Compromise and Settlement - 23(1)

In an action under the Jones Act, the burden is upon the party claiming settlement as a defense to show that it was entered into by the seaman with an informed understanding of his rights and a full appreciation of the settlement's consequences. Jones Act, 46 U.S.C.A. § 688 et seq.

3. Compromise and Settlement - 23(3)

In view of evidence that seaman who entered into settlement of claim for injury to his knees when crew boat in which he was riding ran aground believed that settlement included a promise of continued employment, employer did not discharge burden of demonstrating that seaman, who was discharged on evening of day of settlement, fully appreciated the consequences of the settlement. Jones Act, 46 U.S.C.A. § 688 et seq..

* * * * *

Appeal from the United States District Court for the Western District of Louisiana.

Before THORNBERRY, MORGAN and RONEY, Circuit Judges.

PER CURIAM:

The plaintiff in this action, a Jones Act, 46 U.S.C.

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§ 688 et seq., employee of Diamond M. Drilling Company, sustained an injury to his knees when the crew boat in which he was riding ran aground in St. Mary Parish, Louisiana. The plaintiff, who was not represented by counsel, and the defendant, who was represented by an insurance adjuster, entered into a settlement for the sum of $18,000 on February 8, 1974. After interviewing the plaintiff, Judge Edwin F. Hunter, Jr., of the Western District of Louisiana approved the settlement. Later, on the evening of the day of the settlement, defendant terminated plaintiff's employment. Plaintiff filed an action to have the settlement set aside contending that during the negotiations he had been led to believe that he would retain his employment. Judge Richard J. Putnam vacated the settlement and after trial rendered judgment in favor of the plaintiff for the sum of $25,000. Defendant appeals from the order of the district judge vacating the settlement.

[1-3] The only issue before this court is whether there was a factual basis for the decision of the trial court in setting aside the settlement. Settlements involving seamen's rights are subject to careful scrutiny. See, *Garrett v. Moore-McCormack Co.*, 317 U.S. 239, 248, 63 S.Ct. 246, 87 L.Ed. 239 (1942). In an action under the Jones Act, the burden is upon the party claiming settlement as a defense to show that it was entered into by the seaman with an informed understanding of his rights and a full appreciation of the settlement's consequences. See, *Blanco v. Moran Shipping Company*, 483 F.2d 63 (5th Cir. 1973); *Cates v. United States*, 451 F.2d 411 (5th Cir. 1971). In this case, there was ample evidence to demonstrate that the plaintiff was led to believe that he would maintain his employment. Gueho questioned the insurance adjuster whether the settlement would affect his job and received the reply that there would be no effect. Moreover, when the plaintiff had entered into

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a prior settlement concerning a previous injury he obtained the specific promise from Diamond that he would maintain his employment. This previous promise, coupled with the responses given by the adjuster to plaintiff's questioning concerning his employment, clearly demonstrates that the plaintiff was led to believe that the settlement included a promise of continued employment. In short, the defendant did not bear its burden of demonstrating that the seaman fully appreciated the consequences of the settlement.

The judgment of the district court is Affirmed.

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APPENDIX C

JUDGMENT OF CIRCUIT COURT

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

October Term, 1975

No. 75 - 2742
Summary Calendar

D. C. Docket No. CA 74-168

JOSEPH S. GUEHO,
Plaintiff-Appellee,
versus
DIAMOND M. DRILLING COMPANY, ET AL.,
Defendants-Appellants

Appeal from the United States District Court for the Western District of Louisiana

Before THORNBERRY, MORGAN and RONEY, Circuit Judges.

J U D G M E N T

This cause came on to be heard on the transcript of the record from the United States District Court for the Western District of Louisiana, and was taken under submission by the Court upon the record and briefs on file, pursuant to Rule 18;

ON CONSIDERATION WHEREOF, It is now here

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ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

December 17, 1975

Issued as Mandate: Feb 10, 1976.

APPENDIX D

ORDER DENYING PETITION FOR REHEARING

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 75 - 2742

U.S. Court of Appeals
FILED
Feb 2 1976
Edward W. Wadsworth, Clerk

JOSEPH S. GUEHO,
Plaintiff-Appellee
versus
DIAMOND M. DRILLING COMPANY, ET AL.,
Defendants-Appellants

Appeal from the United States District Court for the Western District of Louisiana

ON PETITION FOR REHEARING
(FEBRUARY 2, 1976)

Before THORNBERRY, MORGAN and RONEY, Circuit Judges.

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed in the above entitled and numbered cause be and the same is hereby denied.

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APPENDIX E

FINDINGS OF FACT AND CONCLUSIONS OF LAW

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

FILED: Apr 7, 1975
Robert H. Shemwell
Clerk

By: Ronald G. Weathers
Deputy

JOSEPH S. GUEHO
versus
DIAMOND M. DRILLING COMPANY
and ARGONAUT INSURANCE COMPANY

FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter came on for trial on February 25, 1975, and the trial was concluded on February 26, 1975. After considering the pleadings, stipulations, evidence and argument of counsel, the court makes the following findings of fact and conclusions of law.

FINDINGS OF FACT

1.

Plaintiff, JOSEPH S. GUEHO, is a resident of full age, of Hackberry, Cameron Parish, Louisiana, and DIAMOND M. DRILLING COMPANY is a corporation duly authorized to do and doing business in the State of Louisiana. ARGONAUT INSURANCE COMPANY is the liability insuror of

DIAMOND M. DRILLING COMPANY.

2

On or about March 11, 1972, plaintiff was employed by DIAMOND M. DRILLING COMPANY as a floorman on DIAMOND M's Rig No. 40, which was a drilling barge owned by DIAMOND M. DRILLING COMPANY and which was then located in navigable waters of the State of Louisiana. Plaintiff's average earnings were $3.30 per hour.

3

The aforesaid drilling barge, Rig No. 40, and the M/V Elton D, upon which plaintiff was riding when he was injured, were vessels in navigation and in navigable waters of the United States.

4

At all times pertinent hereto, plaintiff was working in the course and scope of his employment with DIAMOND M. DRILLING COMPANY in connection with the operation being conducted on and from the aforesaid Rig No. 40 and the M/V Elton D; plaintiff had been employed on the said vessels for some length of time and was attached to the said vessels; at all times pertinent hereto, plaintiff was employed as a floorman and member of the crew of the said vessels.

5

On or about March 11, 1972, while plaintiff was working in the course and scope of his employment with DIAMOND M. DRILLING COMPANY, and while he was being transported aboard a crew boat, the M/V Elton D, the crew

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boat ran ashore.

6

As a result of this accident, plaintiff sustained an abrading and contusing injury to his right knee, and was treated for this injury by Dr. George P. Schneider, Orthopedic Specialist of Lake Charles, Louisiana. Under the treatment of Dr. Schneider, plaintiff reached his maximum recovery from said injury in November of 1974.

7

The accident of March 11, 1972, was caused by the negligence of the operator of the M/V Elton D, an employee of the DIAMOND M. DRILLING COMPANY, within the meaning and intent of the Jones Act (46 U.S.C.A. Section 688), as amended.

8

On February 8, 1974, plaintiff entered into a compromise agreement with defendants, under the terms of which he settled all claims he might have as a result of injuries received in said accident for the sum of $18,000.00.

9

At the time of said settlement, plaintiff was under the impression that a condition of said settlement was a promise by DIAMOND M. DRILLING COMPANY to continue him in his employment with them. Plaintiff had reasonable grounds upon which to base this belief.

CONCLUSIONS OF LAW

1

This court has jurisdiction in the premises.

2

Recovery under the Jones Act and the General Maritime Law is the exclusive remedy of plaintiff, JOSEPH S. GUEHO, to the exclusion of any and all remedies under the Louisiana Workmen's Compensation Law, LSA-R.S. 23:1021, et seq., or under Article 2315 of the Louisiana Civil Code, or under the Longshoremen's and Harbor Worker's Compensation Act, 33 U.S.C.A. 901, et seq., or under any other laws.

3

At the time of the accident on March 11, 1972, plaintiff was in the course and scope of his employment with DIAMOND M. DRILLING COMPANY, and was employed as a floorman and a member of the crew of a vessel, and was injured in the furtherance of his dutes as such.

4

The accident of March 11, 1972, was caused by the negligence of the employees and agents of DIAMOND M. DRILLING COMPANY.

5

The purported compromise settlement of February 8, 1974, is null and void, and is expressly set aside by the court.

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Plaintiff is entitled to judgment herein against DIAMOND M. DRILLING COMPANY and ARGONAUT INSURANCE COMPANY in the amount of $25,000.00 for damages, wages, bonuses,maintenance and cure, and all other items of recovery for which he might make claim.

THUS DONE AND SIGNED in Lafayette, Louisiana, on this 4th day of April, 1975.

s/ R. J. Putnam
UNITED STATES DISTRICT
JUDGE

JUDGMENT

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF LOUISIANA
LAFAYETTE DIVISION

U.S. District Court
Western District of Louisiana
Filed: Apr 7, 1975
ROBERT H. SHEMWELL, CLERK

By Ronald G. Weathers
Deputy

JOSEPH S. GUEHO
VERSUS
DIAMOND M. DRILLING COMPANY
and ARGONAUT INSURANCE COMPANY

CIVIL ACTION
NO. 74-168

JUDGMENT

This matter having come on for trial, and the court having considered the pleadings, evidence, stipulations and arguments of counsel, and having made findings of fact and conclusions of law based thereon, and after due consideration, being of the opinion that the law and evidence are in favor of plaintiff;

IT IS ORDERED, ADJUDGED AND DECREED that there be judgment herein in favor of plaintiff, JOSEPH S. GUEHO, and against defendants, DIAMOND M. DRILLING COMPANY and ARGONAUT INSURANCE COMPANY, in the full sum of $25,000.00, together with legal interest thereon from entry of judgment, 1975, until paid.

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that defendants pay all taxable costs in these proceedings.

JUDGMENT READ, RENDERED and SIGNED at Lafayette, Louisiana, on this 4th day of April, 1975.

s/ R. J. Putnam
UNITED STATES DISTRICT
JUDGE